

April 1969 until date of payment and in default of the determination of the amounts due, the registrar shall determine such amounts and the costs of this action.

Judgment for the plaintiffs.

Solicitors: *Joseph & Son; Ng Ek Teong & Partners.*

LEONG YUET HENG v. CHAN THAI & ORS.

[F.C. (Azmi L.P., Suffian and Ali F.JJ.) November 15, 1972]

[Kuala Lumpur — Federal Court Civil Appeal No. 61 of 1972]

Administrative Law — Certiorari and mandamus — Whether appeal lies from decision of Rent Tribunal under Control of Rent Act, 1966, s. 23, to the Rent Appeal Board — Appeal Board deciding it has no jurisdiction — Whether decision should be quashed by certiorari — Mandamus — Control of Rent Act, 1966, s. 12, 13, 15, 16 and 23.

In this case Madam Chan Thai had applied to the Kuala Lumpur Rent Tribunal for a certificate under section 23(1) of the Control of Rent Act, 1966, that certain premises had ceased to be controlled premises. The Rent Tribunal dismissed her application whereupon she appealed to the Kuala Lumpur Rent Appeal Board. The Appeal Board held that it did not have jurisdiction to entertain the appeal. Madam Chan Thai thereupon applied to the High Court for an order of *certiorari* to quash the board's decision and for an order of *mandamus* directing the board to hear and determine the appeal. The High Court holding that a decision of the tribunal under section 23 could be appealed to the board, ordered that the board's order be quashed and ordered the board to hear and determine the appeal. The appellant appealed to the Federal Court.

Held, dismissing the appeal: there is a right of appeal from a decision of the Rent Tribunal under section 23 to the Rent Appeal Board and therefore the learned judge was right in issuing the orders of *certiorari* and *mandamus*.

Cases referred to:-

- (1) *Hongkong and Shanghai Banking Corporation, Ipoh v. Rent Tribunal for Ulu Kinta & Ors.* [1972] 1 M.L.J. 70.
- (2) *Mohamed Ashraff & Anor. v. The Commissioner for Federal Capital, Kuala Lumpur & Anor.* [1972] 2 M.L.J. 69.

FEDERAL COURT.

N. A. Marjoribanks (K. L. Devaser with him) for the appellant.

R. R. Chelliah for the respondent.

Azmi L.P. (delivering judgment of the court): Madam Chan Thai, the first respondent, owns premises No. 307, Jalan Pudu, Kuala Lumpur. By an agreement dated 17th March, 1961, she granted to Madame Leong Yuet Heng the appellant and to another person a tenancy of the front portion of the first floor for a fixed period of two years and six months from 15th March, 1961. At the end of that period the appellant did not vacate the front portion but remained in possession. (Her co-tenant had retired from the business they ran on the premises and is not concerned in these proceedings.)

It is common ground that the premises were controlled premises and therefore subject to the provisions of the Control of Rent Act, 1966. Section 23 provides for decontrol of controlled premises.

On 8th February, 1968, Madame Chan Thai applied to the Kuala Lumpur Rent Tribunal for a certificate under section 23(1)(a) certifying that the whole of the first floor had ceased to be controlled premises as from 17th September, 1963, and that any person holding the premises after that date ceased to enjoy the protection which he would otherwise have enjoyed under the Act. On 23rd April, 1968, the Rent Tribunal dismissed her application.

She appealed to the Kuala Lumpur Rent Appeal Board. Considering itself bound by an unreported decision of Chang Min Tat J. in Originating Motion No. 6 of 1971 in the Ipoh High Court, the board held that it did not have jurisdiction to entertain the appeal and accordingly dismissed it. The board is the second respondent in this appeal.

Madame Chan Thai applied to the Kuala Lumpur High Court for an order of *certiorari* to quash the board's order and for an order of *mandamus* directing the board to hear and determine her appeal.

On 5th June, 1972, Mohamed Azmi J., holding that a decision of the tribunal under section 23 could be appealed to the board, ordered that the board's order be quashed and commanded the board to hear and determine the appeal.

The appellant appeals to this court.

The main issue is whether or not the board has jurisdiction to hear and determine an appeal against a decision made under section 23 by the tribunal. Mr. Marjoribanks for the appellant argues that the board has no jurisdiction while Mr. Chelliah for the first respondent argues that the board has jurisdiction. We are not concerned here with the merits or demerits of her appeal.

Before going any further it would be convenient to set out the other provisions of the Control of Rent Act that are relevant. They are —

"12. (1) Except for the purpose of section 18A of this Act, there shall be established for any particular area or areas in a State a Rent Tribunal (in this Act referred to as 'the tribunal') consisting of a Chairman and two members appointed in the manner provided under the following sub-sections.

X X X X X

(5) Unless unanimous, the decision of the tribunal on any matter before it shall be by a majority consisting of the concurring opinions of the Chairman and either of the two members; but where the Chairman disagrees with both members notwithstanding that both members may agree between themselves, no decision shall be deemed to have been arrived at, and the matter shall forthwith be referred for a decision to the Appeal Board constituted under section 15 for the area in which the controlled premises in question are situated; and the decision so made shall be final and shall not be questioned in any Court.

X X X X X

13. (1) Upon an application by any landlord or a tenant or any person interested, the tribunal shall have and may exercise the following powers, namely —

- (a) to hear and determine any application for the purpose of determining the fair rent of any controlled premises where the fair rent determined by a Rent Officer under the provisions of this Act is not accepted by either the landlord or the tenant;
- (b) to hear and determine any application made under section 20 for the purpose of apportioning and determining the

fair rent of any controlled premises or any part thereof as between the tenant and all his sub-tenants, where such premises or parts thereof have been sublet, or as between the landlord and each of his joint-tenants, where there is a joint-tenancy subsisting between the landlord and the occupants of the controlled premises or parts thereof, whether such joint-tenancy arises directly as a result of direct letting to such occupants or indirectly as a result of sub-tenancy having been treated by the landlord under sub-section (2) of section 19 as joint-tenancy;

- (c) to approve, to the extent appearing to the tribunal to be fit and proper, any application to increase the rent of any controlled premises in excess of its fair rent in accordance with sub-section (1) of section 9;
- (d) from time to time, to review, vary or set aside any order made by it, as provided by section 14 or to refuse to make such order;
- (e) to make an order for the recovery of possession of any controlled premises or any part thereof for the purpose of development in accordance with section 18;
- (f) to make an order granting exemption from the requirements of paragraph (b) of sub-section (1) of section 19 and in so doing to impose such conditions as it may think fit.

X X X X X

(3) Every application under this section shall, if made by a landlord, be served on his tenant as respondent, and if made by a tenant, be served on his landlord as respondent, and if made by some other person interested, be served on both the landlord and tenant as respondents; and if such application is made by either the landlord or tenant asking the tribunal to exercise its powers under paragraphs (a), (b) and (c) of sub-section (1), such application shall not be entertained unless accompanied with a certificate of dispute signed by a Rent Officer.

(4) Any person claiming to be interested in any proceedings before the tribunal may apply to be made a party to such proceedings.

X X X X X

15. (1) Any person who is aggrieved by the decision of the tribunal may within twenty-one days of the making of such decision appeal against it to an Appeal Board constituted in a manner provided under sub-sections (2) and (3) for the area or areas in which the controlled premises in question are situated; and any decision made thereon by the Appeal Board shall be final and shall not be questioned in any court.

X X X X X

Section 18 enables a landlord to recover possession of controlled premises outside Kuala Lumpur for the purpose of development, by applying to a Rent Tribunal.

Section 18A enables a landlord to recover possession of controlled premises within the Kuala Lumpur Municipality for the purpose of development, by applying to the Federal Capital Commissioner. Subsection (12) of that section provides —

“(12) Any order made by the Commissioner under this section shall be final and conclusive and shall not be questioned in any court.”

Section 23 is in the following words:

“23. (1) In either of the following events, namely —

- (a) where the tenancy of any controlled premises, being a tenancy for a fixed period and other than a monthly tenancy, has been determined either by effluxion of time or by any other means whatsoever; or
- (b) where the tenant of any controlled premises for any reason whatsoever surrenders his tenancy either on his own volition or is required by law so to do,

the landlord thereof may apply to the tribunal requiring the latter to issue a certificate stating either or both of the facts referred to in this sub-section, and upon the issue of such certificate a copy thereof shall be served on the tenant.

A (2) Upon the service of the copy of such certificate, the premises concerned shall forthwith cease to be controlled premises and any person holding on after such cessation shall cease to enjoy the benefits and protection which he would otherwise have enjoyed under this Act but for such cessation.”

B It would seem to us that the effect of paragraph (a) of subsection (1) of section 23 is this: that where the tenancy of any controlled premises has been determined by effluxion of time, the tribunal may on the landlord's application issue a certificate stating that the tenancy has been so determined, whereupon (after service of a copy of the certificate on the tenant) the premises cease to be controlled premises; and that the tribunal may issue such a certificate only where the tenancy was for a fixed period, but not where it was a monthly tenancy and not where the fixed period tenancy has been superseded by a monthly tenancy.

C The Ipoh case by which the Appeal Board felt bound was appealed to the Federal Court and the latter's judgments were reported in *Hongkong and Shanghai Banking Corporation Ipoh v. Rent Tribunal for Ulu Kinta and Others*.⁽¹⁾ The facts in that case were as follows.

D The owners of Hongkong Bank Chambers in Ipoh let the first and second floors to Gibb & Co. for many years under successive leases. The last lease was for three years expiring on 31st March, 1968. An option for renewal was not exercised by the tenants. The Control of Rent Act 1966 came into force on 1st January, 1967.

E On 31st July, 1968, four months after the expiry of the lease, the landlords applied to the Rent Tribunal for Ulu Kinta for decontrol of the premises under section 23 of the 1966 Act. To cut a long story short, the tribunal refused to give a certificate on the ground that in fact and in law a new month-to-month tenancy had been created.

F The landlords then applied to the High Court, by way of *certiorari* for the tribunal's order to be quashed. The landlords applied for *certiorari* because they thought that the 1966 Act did not provide for an appeal to the Rent Appeal Board from a decision of the tribunal under section 23.

G Chang Min Tat J. dismissed the application, as the tribunal was justified on the evidence in finding as a fact that a monthly tenancy had superseded the last tenancy after the expiry of the lease, with the result that resort to section 23(1) was not open to the landlord. The learned judge went on to say that the tribunal had neither acted in excess or want of jurisdiction, nor was there any error of law on the face of the record.

H The learned judge also held that there was no appeal against the decision given under section 23.

I An extract from his judgment on this point is given below:

“As to this, Mr. Puthuchear [for the landlords] contends that the Act does not provide any appeal from such a decision. He suggests that the appeal provided in section 15 of the Act lies only from a decision of the Rent Tribunal in exercise of its normal powers under section 13(1) and founds his submission on the use of the definite article ‘the’

in section 15 as against the normal use of the word 'any'. He also submits that under section 23(1), the Rent Tribunal has nothing to do except to issue a certificate for decontrol upon proof that the requirements for decontrol have been met. This was the view of His Lordship the Chief Justice of Malaya in his as yet unreported judgment in Federal Court Civil Appeal No. 43 of 1970, *United Fire and General Insurance Co. Ltd. v. Jaffnese Co-operative Society* ([1971] 1 M.L.J. 118 @ 121) on section 23.

'As I understand it the section provides that, whenever the tenancy of any controlled premises comes to an end — whether upon expiry or other determination of a lease for a term of years, or, in case of monthly tenancies, upon surrender thereof, voluntary or otherwise — the landlord is entitled, upon application to the Rent Tribunal at any time, to a certificate of decontrol of the controlled premises. The tribunal, of course, is left no discretion in the matter, since it is required to issue such certificate upon proof of the event described in either paragraphs (a) or (b).'

This view appears to support the contention that the issue of a certificate of decontrol is a matter of course and that the only redress of an aggrieved party is by *certiorari*.

Mr. Sivalingam [for the tenants] in reply contends that the plain meaning of the language of the sections must necessarily argue against such an interpretation and that an appeal lies from any decision of the Rent Tribunal whether under section 13 or section 23 to the Appeal Board and that therefore *certiorari* does not lie.

On due consideration, the submission of Mr. Puthuchery seems to me to be the more correct one. Apart from the necessity as a matter of proper construction to give the plain meaning to the use of the definite article, the juxtaposition and sequential numbering of the sections, section 13(1) containing the ordinary powers of the tribunal, section 14 providing for the review of its own orders by the tribunal and section 15, containing the provisions for appeal from the Rent Tribunal to an Appeal Board in Part III of the Act and the appearance of section 23(1) under Miscellaneous in Part VI, in my view, argue in favour of his proposition: see section 6, Interpretation and General Clauses Ordinance No. 7 of 1948 and *Craies* on Statute Law (5th Edn.) pages 192-197.

I am of the view therefore that no appeal is given by statute to a decision of the Rent Tribunal under section 23(1) and consequently *certiorari* lies for the usual reasons."

It seems clear to us that his remark that there is no provision for an appeal under section 23 of the Act was in the circumstances unnecessary and may therefore be considered as *obiter*.

The learned Chief Justice was content to dismiss the landlords' appeal on the ground that the tribunal had found as a fact that a monthly tenancy had supervened after the expiry of the lease, with the result that resort to section 23(1) was not open to the landlords.

It would appear, however, that before the Federal Court the tenants argued that the landlords had a right of appeal to the Appeal Board and as they had not exercised that right, *certiorari* would not lie. The learned Chief Justice did not find it necessary to express his view on this argument. Nor did Ali F.J. Ong Hock Sim F.J., however, agreed with the argument that the Act contained provision for an appeal against a decision under section 23(1).

When Mohamed Azmi J. decided this matter, he had before him both Chang Min Tat J.'s judgment and the Federal Court judgment.

The first point taken before us is this. Where upon the face of the proceedings themselves it appears that the determination of an inferior tribunal is wrong in law, *certiorari* to quash will be granted, but where on the other hand upon the face of the pro-

ceedings themselves it appears that the determination of the inferior tribunal is not wrong in law, *certiorari* to quash will not be granted. At the time of the Rent Board's decision that it had no jurisdiction to hear an appeal against a decision of the Rent Tribunal there was only the judgment of Chang Min Tat J. on this point (as the matter had not then gone on appeal to the Federal Court), and as it had not been reversed by a higher court the law expounded by him was the law of the land, and therefore the Rent Appeal Board was obliged to apply it. Upon the face of the proceedings then, it is said, it is clear that the determination of the board was right, and not wrong, and as there was no error on the fact of the record, *certiorari* to quash should not have been granted.

With respect, in our view there is no merit in this argument. While it is true that the Rent Appeal Board was bound to apply the law as enunciated by Chang Min Tat J., it is open to another judge of the High Court to disagree with him and hold that an appeal lies from a decision of the tribunal under section 23 to the Board, as we held by Mohamed Azmi J. In other words it is open to another judge of the High Court to hold that there was error on the face of the record of the proceedings of the board, and use his discretion to issue an order of *certiorari*.

The second and last point taken before us is this, that there is no right of appeal to the board against a decision of the tribunal under section 23. Subsection (1) of section 13 of the Act gives the powers of the Rent Tribunal. It does not include the power to give a certificate under section 23, though it would have been perfectly simple for Parliament to include it if it had wanted to. But instead the power to give a certificate of decontrol has been put in a separate section — section 23 — in a Part headed Miscellaneous. Section 23 is completely new — it did not exist in the Control of Rent Ordinance, 1956, which the Act replaced.

It is said that when the Rent Tribunal acts under section 13, the tenant must be made a respondent, there must be service on him, there must be a hearing and a trial, whereas an application by a landlord under section 23 is made *ex parte*, the tenant has no right to appear, and subsection (4) of section 13 does not apply to him.

It is said that proceedings under section 13 are judicial whereas proceedings under section 23 are administrative, rather like proceedings under the new section 18A.

It is said that the Federal Court has held in *Mohamed Ashraff and Another v. The Commissioner for Federal Capital, Kuala Lumpur and Another*⁽²⁾ that proceedings under section 18A are administrative, so that you could have an application under that section without a hearing, that such an application need not be served on the tenant, and that therefore an application under section 23 by a landlord is also an administrative matter and need not be served on the tenant either.

It is said that there is no inherent right of appeal, that such a right must be given by express legis-

lation, that the right of appeal given by section 15 must be read with section 13, not with section 23, and that as subsection (1) of section 13 refers only to the powers of the Rent Tribunal as set out in its paragraphs (a) to (f), which do not include the power of the tribunal to give or refuse a certificate under section 23, it is clear that the right of appeal conferred by section 15 can only mean that a decision of the tribunal under paragraphs (a) to (f) of subsection (1) of section 13 may be appealed to the Rent Appeal Board, but not a decision of the tribunal to give or not to give a certificate under section 23. It is said that a decision envisages a hearing and as there is no hearing under section 23 a determination by the tribunal under that section is not a decision. It is said that the operative words in subsection (1) of section 13 are "the decision of the tribunal", not *any* decision.

It is said that it is significant that the repealed Control of Rent Ordinance, 1956, when listing the powers of the old Rent Assessment Board in subsection (1) of section 8 of the Ordinance, includes in paragraph (e) the power of the board to give certificates under paragraph (m) of subsection (1) of section 12, so that it was clearly the intention of the legislature then to allow appeals against the decision of that board even though the right of appeal was conferred by a section earlier than section 12, namely by section 11. This, it is said, was in startling contrast to the arrangements of the sections in the 1966 Act which gives the power of the tribunal in two sections far apart from each other, namely in sections 13 and 23, and deals with appeals from the tribunal in section 15. There is no mention in section 13 of the Rent Tribunal's powers under section 23, and as the right of appeal to the board is conferred by the legislature in section 15, clearly the intention (it is argued) is to give a right of appeal against a decision made by the tribunal under section 13, but not under section 23. It is said that the courts must give effect to this plain meaning of the Act and disregard the consequences.

We are of the opinion that there is a right of appeal from a decision of the tribunal under section 23 to the Rent Appeal Board. In our view the fact that the section (No. 15) dealing with appeals is placed between section 13 and section 23 does not preclude an appeal against a decision of the tribunal made under section 23. To construe section 15 as contended by Mr. Marjoribanks is to substitute for the words "the decision of the tribunal" in it the words "a decision under section 13 of the tribunal". In our view, to do so would be contrary to canons of construction. Subsection (1) of section 12 clearly states that Rent Tribunals are established not only for the purpose of Part III of the Act, but for the purpose of the *whole* Act. That is clear from the words "for the purpose of this Act" of the original subsection. We are of the opinion that even after the amendment of that subsection by P.U. (A) 387/70 which has been re-enacted by Act A87/71, Rent Tribunals are established for the purpose of the whole Act. This means that Rent Tribunals are established also for the purpose of exercising powers under section 23. The tribunal's powers enumerated in subsection (1) of section 13 are not exhaustive, for the Act makes quite clear that a tribunal

also has powers under section 23.

We are of the opinion that the words "a decision" in section 15 can be construed to mean *any* decision including decisions made by the tribunal under section 23.

With respect to Mr. Marjoribanks' argument, we are of the view that the determination of the tribunal to issue or not to issue a certificate under section 23 is a decision, notwithstanding that it may be unnecessary for a tenant to be made party to an application under that section.

We would therefore dismiss this appeal.

On the application of Mr. Devaser we shall hear arguments on costs on a date to be fixed.

Appeal dismissed.

Solicitors: K. L. Devaser & Co.; R. R. Chelliah Bros.

PUBLIC PROSECUTOR v. KAM PHANG LIN

[A.Cr.J. (Abdul Hamid J.) November 18, 1972]

[Kuala Lumpur — Selangor Criminal Appeal No. 1067 of 1972]

Arms and Ammunition — Behaving in a disorderly manner — Inadequacy of sentence — Arms Act, 1960, s. 31.

The respondent in the company of two others stopped his car in front of the complainant's house on the night of November 27, 1971 and asked for the complainant's brother. The respondent further told the complainant to ask her brother to come out and at the same time he pulled a revolver out of his trouser pocket, showed it to her and said that he would kill her brother. The respondent was charged under section 31 of the Arms Act with the offence of behaving in a disorderly manner whilst carrying a firearm. The learned magistrate found the respondent guilty and ordered that he be bound over in the sum of \$300 for a period of one year. On appeal by the Public Prosecutor,

Held: the behaviour of the respondent constituted an unwarranted abuse of the privilege granted to him to own a firearm and it further constituted a serious breach of the conditions and the law governing possession of firearms. The sentence in this case was therefore manifestly inadequate and should be changed to a fine of \$500 or in default six months imprisonment.

MAGISTRATE'S CRIMINAL APPEAL.

Wan Majid bin Wan Abdul Hamid (Deputy Public Prosecutor) for the appellant.

K. Sothinathan for the respondent.

Abdul Hamid J. (delivering oral judgment): The Public Prosecutor is appealing against sentence on the ground that the sentence imposed by the magistrate was manifestly inadequate.

The respondent was charged as follows —

"That you on 27.11.71 at about 8.30 p.m. in front of house No. 6, Lorong Awan 7, Ulu Klang New Village, in the District of Kuala Lumpur, in the State of Selangor whilst carrying a firearm, an Automatic WALTER .32 PISTOL No. 241050, did behave in a disorderly manner, to wit, by showing the said pistol to one LEONG YOK MOI and threatening to shoot her brother LEONG YAW KOK, and that you have thereby committed an offence punishable under section 31 of the Arms Act No. 21/60."